

**MEMORANDUM OF AGREEMENT AMONG THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
AND
UNITED STATES DEPARTMENT OF THE INTERIOR,
ACTING THROUGH THE UNITED STATES FISH AND WILDLIFE SERVICE,
REGARDING RESTORATION OF RESOURCES
INJURED BY THE 8/10/93 TAMPA BAY OIL SPILL**

I. PURPOSE

This Memorandum of Agreement ("MOA") is entered into for the following purposes:

A. To ensure the coordination and cooperation of the Florida Department of Environmental Protection ("FDEP"), National Oceanic and Atmospheric Administration ("NOAA"), and United States Department of the Interior, acting through the United States Fish and Wildlife Service ("DOI") for planning and implementation of restoration of natural resources injured, destroyed or lost ("injured resources") as a result of the discharges of # 6 fuel oil and Jet A fuel into the waters of Tampa Bay and the Gulf of Mexico due to collisions on August 10, 1993, of the Tank Barge Ocean 255 and the Tank Barge B-155 with the freighter Balsa 37 near the entrance of Tampa Bay, Florida ("the Tampa Bay oil spill"), and

B. To govern expenditures of funds recovered from the owners or operators of the above vessels ("the responsible parties") for restoration of the injured resources and resource services pursuant to the terms of consent decrees filed in state and federal court in settlement of Trustee claims arising from the Tampa Bay oil spill ("the consent decrees").

II. PARTIES

The following officials, or their designees, are parties to this MOA and act on behalf of the public as Trustees for the injured resources:

1. The Secretary of FDEP,
2. The Acting Director, Office of Ocean Resources Conservation and Assessment within NOAA's National Ocean Service, and
3. The Secretary of DOI.

III. AUTHORITY

The Trustees enter into this MOA in accordance with the natural resource trustee authorities provided for each Trustee by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq., and other applicable federal law. In addition, FDEP enters into this MOA pursuant to authority provided by Chapter 376, Florida Statutes, and other applicable state law. This MOA also supersedes and replaces the Memorandum of Understanding entered into by the Trustees on March 1, 1994, regarding the Tampa Bay oil spill.

IV. STATEMENT OF OBJECTIVES

Pursuant to Section VI, paragraph 10.e of the consent decrees, the responsible parties will transfer \$2,945,556.00 into the Tampa Bay Oil Spill Restoration Account ("the restoration account"). As required by state and federal law, these funds, together with any interest accruing thereon, (collectively "the restoration funds") are to be used by the Trustees to plan, implement and oversee the restoration, replacement, rehabilitation or acquisition of the equivalent of injured natural resources or lost resource services. The restoration funds will be used in accordance with Volume I of the Final Damage Assessment and Restoration Plan for Ecological Resources (DARP Volume I) and a separate restoration plan to be developed by FDEP and NOAA to address the impacts to beach recreation. Based on the prior assessment actions undertaken by the Trustees for this oil spill, the restoration funds are subject to the following allocations:

1. \$14,600.00 shall be used to fund one or more projects within the area impacted by the spill which augment the operations of bird rehabilitation organizations or networks, ensure existing bird and wildlife rescue equipment is maintained, acquire equipment for small spill response support, or support removal of monofilament fishing line from bird habitats in Boca Ciega, in accordance with Section 4.4.6 of DARP Volume I.

2. \$100,000.00 shall be used to fund projects for sea turtle nest monitoring and protection or priority but currently unfunded activities in the sea turtle recovery plans directly related to Pinellas County area sea turtle enhancement, in accordance with Section 4.5.6 of DARP Volume I.

3. \$132,686.00 shall be used to fund one or more water quality or habitat creation/improvement projects in or benefiting the Boca Ciega or lower Tampa Bay area, in

accordance with Sections 4.2.6, 4.3.6, 4.7.6, and 4.8.6 of DARP Volume I.

4. \$198,270.00 shall be used to augment a permitted beach renourishment project for the oil-impacted beach areas, in accordance with Section 4.9.6 of DARP Volume I.

5. \$2,500,000.00 shall be used to plan for and fund one or more projects selected by the FDEP and NOAA members of the Trustee Council, in accordance with a restoration plan to be developed by FDEP and NOAA, to compensate for lost recreational use of beaches resulting from the Tampa Bay oil spill ("beach use projects").

V. DISBURSEMENT OF FUNDS

A. Restoration account. The Trustees agree that the restoration funds deposited and retained in the restoration account identified in the consent decrees will be used solely in accordance with the objectives described in Section IV and the decision making process described in Section VI of this MOA. Further, unless otherwise agreed by the FDEP and NOAA representatives to the Trustee Council, expenditures of funds from the restoration account to cover administrative costs to plan and implement the restoration plan to address the lost recreational use of beaches shall not exceed \$156,000.00 for NOAA and \$48,000.00 for FDEP. These sums are available to reimburse NOAA and FDEP costs based upon supporting documentation, without need for further agreement by the Trustee Council. No expenditures shall be made from the restoration account to cover administrative costs to plan, implement, and oversee any other projects since funds for these purposes are being paid directly to each of the Trustees pursuant to the consent decrees.

B. The Trustee Council, in accordance with the decision making process identified in Section VI, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to the restoration funds.

VI. TRUSTEE COUNCIL

A. This MOA shall be implemented by a Trustee Council, which shall consist of one representative from each Trustee, except that the Trustee Council shall consist solely of the FDEP and NOAA representatives with regard to planning and implementation of, and approving expenditures

for, projects to address the lost recreational use of beaches.

B. Primary representatives. Each Trustee respectively designates its primary representative on the Council as follows:

1. For FDEP: P. Wieczynski
Chief, Bureau of Emergency Response
Florida Department of Environmental
Protection
3900 Commonwealth Blvd., M.S. 659
Tallahassee, Florida 32399-3000
(850) 488-2974
Fax: (850) 488-5957
2. For NOAA: John Iliff
Restoration Center, Southeast Region
9721 Executive Center Dr. No.
St. Petersburg, FL 33702
(727) 570-5440
Fax: (727) 570-5390
3. For DOI: Bryan Pridgeon
United States Fish and Wildlife Service
Ecological Services Office
9549 Koger Blvd.; Ste. 111
St. Petersburg, FL 33702
(727) 570-5398; ext 13
Fax: (727) 570-5549

C. Alternate representatives. Each Trustee will designates its alternative representative on the Council within 30 days after this MOA is executed.

D. Changing representatives. A Trustee may change its primary or alternate Council representative by providing notice to each of the other Trustees' primary representatives. In the event a Trustee's designated representative can no longer serve in that capacity, the Trustee shall designate a new representative within fourteen (14) days from the date the need presents itself.

E. Communications. All correspondence and communications to or among the Trustees pertaining to activities which are subject to coordination and cooperation under this MOA shall be sent to the primary representative of each Trustee designated herein.

F. Duties and responsibilities. The Trustee Council shall coordinate all Trustee activities and matters within the scope of this MOA. Actions which may be taken or authorized by the Trustee Council in implementing this MOA include but are not limited to:

1. Identifying and selecting specific ecological projects to be funded out of the restoration account.
2. Developing and adopting a restoration plan to address the lost recreational use of beaches (FDEP and NOAA).
3. Identifying and selecting specific projects, consistent with the final restoration plan for the lost beach use, to be funded out of the restoration account (FDEP and NOAA).
4. Overseeing implementation of restoration actions by the responsible parties, as identified in the consent decrees.
5. Overseeing implementation of ecological projects selected pursuant to paragraph 1 above.
6. Overseeing implementation of projects selected pursuant to paragraph 3 above (FDEP and NOAA).
7. Coordinating and undertaking actions to ensure compliance with applicable administrative procedures and/or legal requirements (e.g. National Environmental Policy Act, State/federal permitting requirements).
8. Approving expenditures from the restoration account.
9. Establishing the protocols, etc., referred to in Section V, paragraph B above.
10. Designating a Lead Administrative Trustee (LAT). The LAT shall have no decision making authority or rights beyond those normally held by all Trustees; however, the

LAT will be responsible for the following, as needed and in consultation with the other Trustees:

- a. scheduling meetings of the Trustee Council, preparing agendas for those meetings, and recording actions taken at those meetings;
- b. acting as the central contact for the Trustee Council;
- c. maintaining records and documents received or generated by the Trustee Council;
- d. preparing, issuing, or arranging for public notices or reports as determined to be necessary by the Trustee Council;
- e. performing such other duties as are agreed upon by the Trustee Council.

11. Taking such other actions as the Trustee Council determines are necessary or appropriate to implement this MOA, including to fulfill responsibilities of the Trustees under applicable State or Federal laws.

G. Decision making. Decisions of the Trustee Council require unanimous agreement.¹ With respect to any matter to be decided by the Council, if the Trustee Council cannot reach agreement, the Council shall, within 14 days of encountering an impasse, refer the dispute to the officials for FDEP and NOAA who are parties to this MOA and to the Regional Director of FWS Region 4 in Atlanta, or their successors or designees ("authorized officials") for resolution. The referral shall contain written statements by each member of the Trustee Council briefly explaining the background of the dispute and summarizing the points of disagreement. The authorized officials, or their designees,

¹ However, as noted in paragraph A above, the Trustee Council shall consist solely of the FDEP and NOAA representatives with regard to planning and implementation of, and approving expenditures for, projects to address the lost recreational use of beaches. Notwithstanding the foregoing, NOAA and FDEP will make a copy of the proposed beach restoration plan available to DOI's representative in advance of publication so that DOI may ensure that resources over which it has trusteeship are not adversely impacted by the planned actions. This right is not intended to give DOI a place on the Trustee Council with respect to restoration of lost recreational use of beaches.

shall confer as soon as practicable following receipt of the referral and attempt to resolve the dispute. The Trustees may, at their discretion, establish other mechanisms by which disputes may be resolved. The Trustees further agree that any decision making deliberations will focus on the Trustees' mutual objectives as described in Section IV above. Trustee administrative costs associated with dispute resolution beyond the council level shall not be reimbursable from restoration funds.

VII. MODIFICATION

This MOA may be amended by written agreement of all the Trustees if the Trustees determine an amendment is necessary to accomplish the objectives of this MOA consistently with the requirements of applicable law.

VIII. TERMINATION

This MOA shall be in effect from the date of its execution until the Trustee Council certifies in writing either that all implementation and monitoring of the ecological and beach use projects are complete or that the purposes underlying this MOA have been addressed.

IX. LIMITATION

The rights, responsibilities and commitments identified in this MOA are wholly subject to the availability of funds. Nothing in this MOA shall be construed as obligating FDEP, NOAA, DOI or any other agency of the United States or the State of Florida, their officers, agents or employees, to expend any funds in excess of those which are reimbursable from the restoration funds or are otherwise authorized by law.

X. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOA are intended to be guidance for the respective Trustees. This MOA may not be the basis of any third party challenges or appeals.

XI. NONDISCRIMINATION

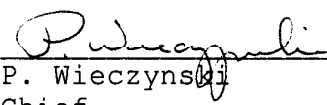
During the performance of this MOA, the parties will not discriminate against any person because of race, color, religion, sex, sexual orientation, or national origin.

XII. EXECUTION; EFFECTIVE DATE

This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the final Trustee's signature.

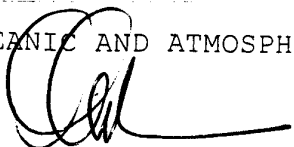
IN WITNESS WHEREOF, the parties hereto have signed this MOA on the day and year appearing opposite their signatures.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

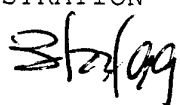

P. Wieczynski
Chief
Bureau of Emergency Response
Department of Environmental Protection

3/17/99
Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

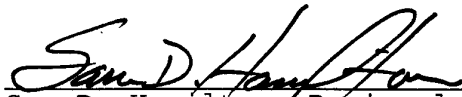


Craig O'Connor
Deputy General Counsel
National Oceanic and Atmospheric Administration



Dated

UNITED STATES DEPARTMENT OF THE INTERIOR
Acting Through
UNITED STATES FISH AND WILDLIFE SERVICE



Sam D. Hamilton Regional Director
United States Fish and Wildlife Service
Region 4
Authorized Official

5/24/99
Date